

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Banking and Insurance Committee

BILL: SB 1330

SPONSOR: Senator Atwater

SUBJECT: Financial Institutions/Credit Unions

DATE: March 13, 2005

REVISED: 03/16/05

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Deffenbaugh	BI	<b>Fav/2 amendments</b>
2.			JU	
3.				
4.				
5.				
6.				

## Please see last section for Summary of Amendments

- ☒ Technical amendments were recommended
- ☐ Amendments were recommended
- ☒ Significant amendments were recommended

### I. Summary:

Senate Bill 1330 amends provisions contained in chapters 655 and 657, F.S., of the financial institutions codes relating to financial institutions, in general, and the regulation of credit unions. The bill:

- Incorporates changes to provide consistency with the National Credit Union Administration guidelines and federal regulations;
- Authorizes the Financial Services Commission to adopt rules to establish specific powers for credit unions and to establish criteria under which the Office of Financial Regulation may place a credit union in involuntary liquidation;
- Updates accounting requirements to conform with generally accepted accounting principles of the United States;
- Revises procedures governing a merger of credit unions;
- Removes specific powers of a credit union in favor of broader business powers;
- Broadens the authority of the Office of Financial Regulation to issue an emergency order to require merger, conversion, or other appropriate action for a failing bank or trust company to apply to other financial institutions, including credit unions; and
- Removes obsolete language relating to the Florida Credit Union Guaranty Corporation, since it no longer exists and provides other clarifying and conforming changes.

This bill substantially amends the following sections of the Florida Statutes: 655.005, 655.044, 655.057, 655.411, 657.002, 657.005, 657.0061, 657.008, 657.021, 657.022, 657.023, 657.024, 657.026, 657.027, 657.028, 657.031, 657.033, 657.038, 657.039, 657.042, 657.043, 657.062, 657.063, 657.064, 657.065, and 657.066. The bill creates the following sections of the Florida Statutes: 655.0201 and 655.4285. The bill repeals the following sections of the Florida Statutes: 657.0315, 657.051, 657.055, 657.068, and 658.43(7).

## **II. Present Situation:**

The Financial Services Commission (commission) consists of the Governor, the Chief Financial Officer, the Attorney General, and the Commissioner of Agriculture. The commission is an independent entity housed within the Department of Financial Services. The Office of Insurance Regulation and the Office of Financial Regulation are under the commission.<sup>1</sup> The Office of Financial Regulation (office) is responsible for all activities of the commission relating to the regulation of state-chartered credit unions and other state-chartered financial institutions, finance companies, securities industries, and money transmitters.<sup>2</sup> A credit union is a nonprofit, cooperative financial institution owned and operated by its members. The Bureau of Credit Unions within the Office of Financial Regulation is responsible for examining and regulating state-chartered credit unions under the provisions of ch. 657, F.S. Presently, there are 103 state-chartered credit unions and 131 federally-chartered credit unions in Florida.

The National Credit Union Administration (NCUA) is the federal agency that charters and supervises federal credit unions and insures savings in federal and most state-chartered credit unions, including Florida, through the National Credit Union Share Insurance Fund, a federal fund backed by the full faith and credit of the United States Government.

Subject to prior approval of the office, state financial institutions are entitled to all privileges and protections granted federally chartered financial institutions of the same type under federal statutes and regulations.<sup>3</sup> This provision is intended to maintain a competitive, dual system of financial institutions.

## **III. Effect of Proposed Changes:**

**Section 1** amends s. 655.005, F.S., relating to definitions, to remove an allowance for loan losses used when calculating equity values for credit unions. Currently, when calculating equity values, a credit union is considered “imminently insolvent” when the institution has equity, less the allowance for loan losses, of less than two percent of its total assets, after adjustment for apparent losses. The bill provides “imminently insolvent” exists when the credit union has equity of less than two percent of its total assets, after adjustments for apparent losses.

The definition of “insolvent” is amended to mean the capital accounts, or equity in the case of a credit union, and all assets of financial institutions are insufficient to meet liabilities; the

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<sup>1</sup> The Office of Insurance Regulation is responsible for the licensure and regulation of insurers and other risk bearing entities. [s. 20.121(3), F.S.]

<sup>2</sup> Section 20.121(3), F.S.

<sup>3</sup> s. 655.061, F.S.

financial institution is unable to meet current obligations as they mature even though assets may exceed liabilities; or the capital accounts, or the equity in the case of a credit union, of a financial institution are exhausted by losses and no immediate prospect of replacement exists. Currently, the section allows a credit union to calculate equity net of an allowance for loan losses.

**Section 2** creates s. 655.020, F.S., relating to service of process, notice or demand on financial institutions, to establish procedures for service of process on all financial institutions in Florida, to include service on a registered agent or on an executive officer, director or business agent at the principal place of business or at any branch. The section provides that this section does not prescribe the only means or necessarily the required means of serving notice or demand on a financial institution.

**Section 3** creates s. 655.044, F.S., relating to record keeping, to require the fiscal year of all financial institutions to be a calendar year, ending on December 31 of every year. Currently, only credit unions are statutorily required to maintain records on a calendar year basis under s. 657.051, F.S. According to the Office of Financial Regulation, the remaining financial institutions maintain a calendar year fiscal year due to federal reporting requirements; therefore, there is no impact due to this statutory change.

**Section 4** amends s. 655.057, F.S., relating to records, to eliminate obsolete references to the Florida Credit Union Guaranty Corporation which insured state-chartered credit unions until 1995 when the Florida Credit Union Guaranty Corporation was liquidated. Presently, state-chartered credit unions are insured through the National Credit Union Share Insurance Fund, a federal fund backed by the full faith and credit of the United States Government, administered by the National Credit Union Administration.

**Section 5** amends s. 655.411, F.S., to correct a statutory cross-reference.

**Section 6** creates s. 655.4185, F.S., relating to emergency action, to authorize the Office of Financial Regulation (office) to issue an emergency order to a “failing financial institution” requiring a merger, conversion, or other appropriate action to protect depositors, stockholders, and account insurers of the institution. The emergency powers authority of the office is transferred from s. 658.43(7), F.S., (repealed by section 29 of the bill), relating to banks and trust companies, to this newly created section in ch. 655, F.S., to include all financial institutions. As defined in s. 655.005(1)(h), F.S., this would additionally include credit unions, associations, savings banks, international bank agencies and branches.

**Section 7** amends s. 657.002, F.S., relating to definitions to remove obsolete definitions of “central credit union” and references to the Florida Credit Union Guaranty Corporation and to clarify definitions of terms to conform to changes in federal regulations. Central credit unions acted as a separate credit union for corporate entities; however, they were made obsolete when corporate entities were allowed to use the services of a credit union just as a natural person. The term, “deposits,” is amended to mean money, rather than capital, placed into the credit union. The term, “equity,” is revised to mean undivided earnings, regular reserves and other reserves, excluding the current allowance for loan losses.

With respect to the “limited field of membership” of a credit union, the bill expands the definition of the term to include members who “live or work” in a certain area rather than only “live” in a certain area. According to the office, this codifies the current practice and interpretation by the office of this section, based in part on the authority for the office in s. 655.061, F.S., to approve any power for a state financial institution which they could exercise if operating as a federally chartered financial institution.

The bill deletes the term, “unimpaired capital.” The term, “shares,” is amended to mean money, rather than capital, paid into the credit union. These changes conform the statute to federal regulations and guidelines.

**Section 8** amends s. 657.005, F.S., relating to applications for authority to organize a credit union. This section provides for an application, rather than a notice of intent, to be submitted to the office to form a credit union, requires the application to include where legal process may be served on a credit union, and replaces obsolete references to “corporation” and “insuring agency” with “National Credit Union Administration.” The section also clarifies that preopening expenses may be paid by organizers or a sponsor and may not be reimbursed by the credit union. Certain costs, such as forms, insurance, and rent, may be recorded, rather than reimbursed, by the credit union as operating expenses.

**Section 9** amends s. 657.0061, F.S., relating to amendments to bylaws of a credit union, to clarify the office’s authority to disapprove bylaw amendments that do not comply with applicable statutes or rules.

**Section 10** amends s. 657.008, F.S., relating to place of doing business, to require that the bylaws designate that legal process may be served at a credit union’s principal place of doing business. A credit union may change its place of business through a change in its bylaws. The section requires a credit union to be operating in a safe and sound manner before it can maintain branch locations and removes a 5 percent capital limit on investments in branch offices. A foreign credit union is required to have accounts in its Florida branches insured by the National Credit Union Administration rather than insured or guaranteed by an insurer or guarantor acceptable to the office or the obsolete Florida Credit Union Guaranty Corporation.

**Section 11** amends s. 657.021, F.S., relating to boards of directors. The section provides that the terms of the board of directors of a credit union be specified in the bylaws.

The bill requires that credit unions maintain officer and director liability insurance and blanket bond coverage under such terms, amounts, and limitations as established by rules of the commission. This replaces current language requiring that any officer or employee who has custody of funds or handles funds to have a surety bond in an amount determined by the board in compliance with rules adopted by the commission.

The section also requires that a credit union have written policies for all areas of operation that comply with commission rules. The section also requires that applications for membership be determined by a policy of the board of directors, requires the board to designate a depository for credit union funds, and allows the board to delegate certain statutory functions. The section

removes certain specific powers and replaces them with broader authority to govern all areas of operation.

**Section 12** amends s. 657.022, F.S., relating to executive officers, to change the requirement for holding the organizational meeting of the board from within 7 days, to within 31 days, after the annual member meeting.

**Section 13** amends s. 657.023, F.S., relating to credit union membership, to include good cause as a basis for closing the account and terminating the membership of a member. This broadens the ability of a credit union to include closing the account of a member who has not otherwise caused financial loss to the credit union.

**Section 14** amends s. 657.024, F.S., relating to membership meetings, to remove reference to “mail” ballots being distributed to members in advance as prescribed in the bylaws. This would allow ballots to be distributed by other means as well as mail.

**Section 15** amends s. 657.026, F.S., relating to supervisory or audit committees. The section removes obsolete language relating to the Florida Credit Union Guaranty Corporation. The section also requires that notice of any practice that may materially affect or potentially materially affect the safety and soundness of the credit union be provided to the board, the office, and the National Credit Union Administration, and removes the reporting requirement for practices that would be “unsafe, unsound or unauthorized.”

**Section 16** amends s. 657.027, F.S., relating to credit committees and credit managers, to provide that credit decisions by a credit manager be made under written conditions of the board and as provided in credit union bylaws. Presently, the section requires that the credit union bylaws provide for the chief executive director to either serve as, or to employ, a credit manager.

**Section 17** amends s. 657.028, F.S., relating to activities of the directors, officers and employees. The section provides that an elected officer, director, or committee member of the credit union, other than the chief executive officer, may not be compensated for their respective services. Presently, the treasurer is also authorized to be compensated. The section also provides that a person may not serve as an officer, director, or committee member if that person has been convicted of certain crimes, has been removed by any regulatory agency, or has performed certain prohibited acts, unless the office approves. Currently, such a person could still be eligible if the person demonstrated a showing of rehabilitation or ability to be bondable.

**Section 18** amends s. 657.031, F.S., relating to powers of a credit union, to include all of the general powers authorized to corporations under ch. 607, F.S., and to broaden the powers to make all conveyances of real and personal property. The commission is authorized to adopt rules to establish specific powers for credit unions that are consistent with standard financial institution practices, the financial institutions codes, and this chapter.

**Section 19** amends s. 657.033, F.S., relating to credit union accounts. The section provides that an account will be considered dormant in 12 months, rather than 24 months, when there is no activity in the account. The section also provides that when an account is dormant for 5 years, rather than 7 years, the account will be considered unclaimed property. The section requires a

credit union to insure its accounts through the National Credit Union Administration (moved from s. 657.031, F.S.); allows a credit union to participate in electronic transfers of funds systems, and establishes the conditions under which a credit union may receive shares and deposits from its members and other credit unions (moved from s. 657.031, F.S.).

**Section 20** amends s. 657.038, F.S., relating to credit union loan powers to clarify the loan powers of a credit union in relation to the obligations from any member, and to provide that a credit union may issue credit cards and debit cards in a manner consistent with commission rules. For credit unions that have been open for less than 5 years or more, the total unsecured obligations outstanding from any one member must not exceed the greater of \$500 or 15 percent of the equity of the credit union. For credit unions that have been open for less than 5 years, the bill provides that the limitation for total obligations outstanding to any member is 10 percent of the credit union's capital. Currently, the limitations on unsecured obligations to members are not contingent upon the length of time the credit union has been operating. These changes will provide consistency with the federal National Credit Union Administration guidelines.

**Section 21** amends s. 657.039, F.S., relating to credit union loan powers and extensions of credit. The bill increases the threshold on loans to executive officers, directors, credit managers, members of supervisory, audit or credit committees that must receive approval from the board of directors from \$5,000 to \$20,000, and to require the board to review lines of credit over \$20,000 annually. These changes will provide consistency with the federal National Credit Union Administration guidelines.

**Section 22** amends s. 657.042, F.S., relating to investment powers and limitations. Credit unions are allowed to invest without limitation in stock of the Federal Home Loan Bank. The section specifies that certain investments are limited to up to one percent of capital of the credit union, removing a reference to \$15,000 or one percent of capital, whichever is greater. The bill allows a credit union to exceed limitations on investments in real estate and equipment for the credit union if the credit union prepares a plan to reduce the investment to statutory limits among other current requirements. These changes will provide consistency with the federal National Credit Union Administration guidelines.

**Section 23** amends s. 657.043, F.S., relating to reserves, to conform to the requirements of the National Credit Union Administration guidelines and federal regulations. The section requires a credit union to maintain an account for loan and lease losses. The amount in this account should be consistent with applicable United States generally accepted accounting principles and industry guidance provided by regulatory agencies or as required by the office. The provisions relating to the conditions under which a credit union may borrow money are transferred from s. 657.031, F.S., to this section.

**Section 24** amends s. 657.062, F.S., relating to conservatorship, to provide that the office may appoint the National Credit Union Administration as a conservator over a credit union when certain violations have occurred, and provides that the conservator may appoint the board of directors. The bill allows the office to appoint the NCUA as conservator if a credit union is significantly undercapitalized and has no reasonable prospect of becoming adequately capitalized. Currently, the section does not address this financial condition. The bill authorizes

the Financial Services Commission to adopt rules defining criteria for undercapitalized or adequately capitalized.

**Section 25** amends s. 657.063, F.S., relating to involuntary liquidation, to revise the criteria under which the office may place a credit union in involuntary liquidation and authorizes the commission to adopt rules establishing the criteria. The bill allows the office to order the credit union be placed in liquidation if it finds that the credit union is insolvent, or imminently insolvent, or is transacting business in an unsound, safe, or unauthorized manner, or is undercapitalized and has no reasonable prospect of becoming adequately capitalized. Currently, the office can exercise its authority to order the liquidation if the credit union is bankrupt, insolvent, transacting business in an unsound, unsafe, or unauthorized manner such that it is threatened with imminent insolvency.

**Section 26** amends s. 657.064, F.S., relating to voluntary liquidation. The section provides for notice of a voluntary liquidation to the office and the National Credit Union Administration 10 days after the action of the board, rather than 5 days. The section removes obsolete language to the Florida Credit Union Guaranty Corporation.

**Section 27** amends s. 657.065, F.S., relating to mergers of credit unions and other financial institutions, to reorganize for clarity the current process and conditions under which a credit union may merge with another credit union. The current, nonrefundable application fee of \$500 remains, but the fee may be waived in the case of insolvency.

**Section 28** amends s. 657.066, F.S., relating to conversion of a credit union, to reorganize for clarity the procedures under which a credit union may convert from a state credit union to a federal credit union and conversely.

**Section 29** repeals the following sections of law:

- s. 657.0315, F.S., relating to the power of a credit union to enter into contracts and transfers this provision to s. 657.031, F.S.;
- s. 657.051, F.S., relating to the fiscal year of credit unions and transfers this provision to s. 655.044, F.S.;
- s. 657.055, F.S., relating to the retention and destruction of credit union records. Retention of records relating to financial institution is provided under s. 655.91, F.S.;
- s. 657.068, F.S., to eliminate obsolete provisions relating to central credit unions, which no longer exist;
- s. 658.43(7), F.S., relating to conditions under which the office or an appropriate federal agency could take immediate action on a failing bank or trust company and transfers this provision to the newly created s. 655.4185, F.S., which is applicable to all financial institutions.

**Section 30** provides an effective date of July 1, 2005.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

According to the Office of Financial Regulation, the bill does not have a fiscal impact on the private sector since it does not impose any additional costs or requirements on financial institutions.

**C. Government Sector Impact:**

According to the Office of Financial Regulation, the bill does not have a fiscal impact on the public sector since it does not impose any additional requirements on the office.

**VI. Technical Deficiencies:**

On page 19, line 6, paragraph “(b)” should be designated as “(f)”.

**VII. Related Issues:**

None.

## **VIII. Summary of Amendments:**

### **Barcode 814460 by Banking and Insurance:**

Eliminates proposed rulemaking authority of the Financial Services Commission (commission), relating to credit union powers, and provides that state-chartered credit unions are authorized to operate in a manner consistent with the provisions of ch. 655 and 657, F.S., and may exercise incidental powers necessary to operate as a credit union, provided that such powers are approved by rule or order of the commission or the Office of Financial Regulation.

### **Barcode 114092 by Banking and Insurance:**

Corrects incorrect reference.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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